TAN HUNG SONG v. REX.

[Court of Criminal Appeal (Brown, Ag. C.J., Spenser Wilkinson and Rogers, JJ.) May 28, 1951]

[Singapore — Criminal Appeal No. 5 of 1951]

Criminal Trial — Charge of murder — Defence of intoxication — Misdirectiton — Admissibility of statement under section 27 of the Evidence Ordinance.

This was an appeal from the conviction of the appellant for murder. The substantial defence of the appellant was that he was in a state of intoxication which precluded him from forming the specific intent to kill. In summing up the learned Judge directed the Jury that "the accused appeared to be fairly steady on his feet. That was Mr. Martin's evidence at 3.30 on the afternoon of the 22nd of August". In cross-examination at the trial Mr. Martin had admitted that the appellant was unsteady on his feet. It appeared also that certain medical reports on urine tests of the appellant were not put in evidence.

Held, that if there had been no misdirection with regard to the evidence of Mr. Martin and if the medical reports had been admitted and put in evidence it was impossible to say that the Jury must have reached the conclusion they did and therefore the verdict of murder must be set aside and a verdict of culpable homicide not amounting to murder be substituted for it.

Obiter: Section 27 of the Evidence Ordinance allows only so much of the information as distinctly relates to the fact discovered to be admitted in evidence. The section is not intended to let in a confession generally and not one word more of the information which the accused supplied should be given in evidence than is strictly necessary to show how the fact which was discovered is connected with the accused so as in itself to be a relevant fact against him.

Case referred to:—

(1) *Pulukuri Kotayya v. King Emperor* L.R. 74 Ind. App. 65.

COURT OF CRIMINAL APPEAL.

A. V. Winslow (D.P.P.) for the Crown.

T. H. A. Potts assigned for the appellant.

The judgment of the Court was delivered by:—

Brown, Ag. C.J.: — In this case the substantial defence was that the appellant was in a state of intoxication which precluded him from forming the specific intent to kill. At 6 o'clock, nearly three hours after the offence was committed, Doctor Jackson examined the appellant and found that he was unsteady on his feet, he was unable to walk a straight line and he was unable to stand steady on one leg. That evidence of Doctor Jackson was repeated to the Jury by the learned Judge in the summing-up. But the important point about that evidence, which was not as it seems to us made at any rate at that time in the summing-up, was that it was nearly three hours after the offence was committed.

Now at 3.30 the accused was seen by Mr. Martin at the Police Station, and Mr. Martin at first in his evidence said that the accused appeared to be fairly steady on his feet. But when he was pressed in cross-examination he agreed that Doctor Jackson's description of how he found the accused at 6 o'clock was pretty well how he was when Mr. Martin saw him at 3.30 at the Police Station. Therefore upon that answer at 3.30 he must have been unsteady on his feet, unable to walk a straight line and unable to stand steady on one leg. The learned Judge's direction to the Jury on that was: "the accused appeared to be fairly steady on his feet. That was Mr. Martin's evidence at 3.30 on the afternoon of the 22nd of August." But it was not Mr. Martin's evidence if you take Mr. Martin's evidence as a whole, and it amounted in our view to a misdirection.

Now at 5.25 the first urine test was made, and there was found to be 215 mg. of ethyl alcohol to 100 ml. urine. At 6 o'clock another urine test was made, and there was found to be 185 mg. of ethyl alcohol to 100 ml. urine. The report of the first test was put in, but a paragraph which we think was admissible and which we think would have assisted the Jury was omitted. That was the paragraph which stated that, according to published statistics, a person showing such a concentration of alcohol — 215 mg. of ethyl alcohol to 100 ml. urine — was in a certain state of intoxication. That paragraph from the first report was not read to the Jury. And in the second report there was a similar paragraph with a difference, because the concentration of alcohol was less at 6 o'clock than it was at 5.25. The second report was omitted from the evidence altogether. Crown Counsel has told us his reasons for omitting that paragraph in the first report and for omitting the second report altogether, and we sympathise with him. But we wish to express our view that in both cases they should have been admitted, because that was the report of an expert, expressing his opinion of the state of intoxication which would probably result from that concentration of alcohol and expressing an opinion based on statistics which it is his business in the course of his profession to study. For that reason we think it should have been admitted, and we think that if it had been admitted, it would have given the Jury a better idea of the state of intoxication which this man was in at 5.25 and 6 o'clock.

If there had been no misdirection with regard to Mr. Martin's evidence and if these reports had been admitted and put in evidence, as we think they should have been, it is impossible to say that the Jury must have reached the conclusion they did. Putting it at its lowest, we think they might well have said that giving the benefit of the doubt to the accused they were

prepared to find a verdict of guilty of culpable homicide not amounting to murder.

We, therefore, substitute for the verdict as found the verdict of culpable homicide not amounting to murder and we substitute a sentence of eight years' rigorous imprisonment for the sentence which was passed.

Now, there is one other matter to which we think we ought to refer and that is the admission in evidence of Police Constable Omar bin Sardon's reply on page 21: "He (the accused) reported that he had stabbed his wife." The learned Judge very properly directed the Jury to dismiss that evidence from their minds. And it would have had no effect on the result of this appeal, because the appellant did not deny that he had stabbed his wife. But inasmuch as the question which elicited that reply seems to show a misunderstanding of the meaning of section 27 of the Evidence Ordinance, we think it may be of assistance if we explain why it was objectionable.

Section 27 of the Evidence Ordinance allows a Police witness who has discovered a fact in consequence of information supplied by the accused to give in evidence so much of the information as distinctly relates to the fact discovered — even if that information amounts to a confession. But this section is not intended to let in a confession generally, and not one word more of the information which the accused supplied should be given in evidence than is strictly necessary to show how the fact which was discovered is connected with the accused so as in itself to be a relevant fact against him.

What is admissible under section 27 is so much of the information as distinctly relates to the fact discovered. In the present case the point to be established under section 27 was that the body was found on information supplied by the appellant. The statement "I have stabbed my wife" went further than that and was inadmissible. We would refer to the Privy Council decision in *Pulukuri Kotayya v. King Emperor*[1] and to the following passage on page 77 :—

"Information supplied by a person in custody that 'I will produce a knife concealed in the roof of my house' does not lead to the discovery of a knife; knives were discovered many years ago. It leads to the discovery of the fact that a knife is concealed in the house of the informant to his knowledge, and if the knife is proved to have been used in the commission of the offence, the fact discovered is very relevant. But if to the statement the words be added 'with which I stabbed A', these words are inadmissible since they do not relate to the discovery of the knife in the house of the informant."

While we do not wish to lay down any hard and fast rule we think that as a general rule it would be safer first to give evidence of the discovery of the fact before giving evidence of the information which the accused supplied. And in this connection section 137 sub-section 2 of the Evidence Ordinance is material. Thus the examination-in-chief would proceed on these lines :—

"Q. Did the accused speak to you?

A. Yes.

Q. As a result of what he said what did you do?

A. I took the accused to his house.

Q. What did you find?

A. I found this knife which was concealed in the roof."

Up to this point there has been no danger of admitting an inadmissible statement. The fact of the discovery of the knife has been established, and that it was discovered as a result of something which the accused said. But if section 27 is to be used, the next question must be directed to eliciting so much of the information supplied by the accused as distinctly relates to the discovery of the knife. And here the danger lies. It is at this point that the Court must take step to guard against the danger. The Court may think it right to make the witness write down the answer first. Or it may prefer to send the Jury out while the matter is discussed. The point is that it is the business of the Court to be alert to the danger that the witness, in stating what the accused said, may give in evidence more than distinctly relates to the fact discovered. And by first laying a foundation of the evidence relating to the fact discovered, the Court is given time to put itself on guard.

For the conviction of murder, there is substituted a conviction of culpable homicide not amounting to murder. The sentence of death is quashed and a sentence of eight years' rigorous imprisonment is substituted to run from the date of conviction.

Order accordingly.

THE FIRM OF A. M. K. M. K. v. M. RM. PERIYANAN CHETTIAR.

[Orig. Civ. Juris. (Abbott, J.) August 25, 1951]

[Penang — Civil Suit No. 363 of 1950]

Debtor and Creditor (Occupation Period) Ordinance, 1948, s. 4(1) — Pre-occupation debt paid during occupation when both currencies were at par.

The plaintiffs and the defendant, both money-lenders, operated a current account between themselves upon the basis of loan with interest. On the 15th of February 1942 (the day the Japanese occupied Malaya) the defendant was